
The
Honorable
Stephen
Bogacz

~

Queens
County
Family Court



The Judicial System
U.S. History
Mr. Hall
BCDS



Name:

Buckley Country Day School

Mock Trial

Spring 2018



Sixteenth Annual



Seventh Grade

Session 1 - Tuesday, April 10
Introduction to the Trial

Session 2 - Tuesday, April 24
Midpoint Practice

Session 3 - Tuesday, May 15
Mock Trial

SEPARATION of POWERS:

The JUDICIAL SYSTEM

The Criminal Law serves as a perfect example of the separation of powers among the three coordinate branches of our government.

In each state, the Legislature enacts a series of laws that it determines to constitute criminal conduct, such as assault, robbery, burglary, etc. In enacting each law, the Legislature defines the specific conduct that constitutes a particular crime. For example, in New York, the crime of robbery is defined as a taking of property by use of force.

The police are part of the executive branch of government. When the police arrest someone and charge him/her with violating a section of the criminal law, they are executing, or enforcing, that law. That arrest is then reviewed by another part of the executive branch, the prosecutor's office. This is usually the District Attorney of the county in which the alleged crime took place. The prosecutor makes the final determination as to what, if any, crimes to charge.

When the prosecutor officially charges a person with having committed a crime, the case then goes to the judicial branch of the government, for a determination as to whether the person charged did, indeed, violate the criminal law. This determination is usually made at a trial.

ELEMENTS of a TRIAL

The prosecution must prove each element of each crime charged beyond a reasonable doubt. For example, in a robbery case, the prosecution must prove that property (element #1) was taken (element #2) from the victim (element #3), by the person charged (element #4), by the use of force (element #5). This determination is usually made by a jury, but can be made by a judge if a criminal defendant waives a jury trial.

Proof at trial is most often in the form of sworn testimony (i.e., testimony that is given after the witness swears under oath to testify truthfully) that is provided by witnesses. The prosecution presents its witnesses first, because it has the burden of proving the case. The person charged does not have to prove his/her innocence. In fact, the person charged does not have to prove anything.

When the prosecutor questions any of his/her witnesses, this is called direct testimony, and s/he may only ask open-ended questions. These are questions that call for the witness to provide details in answering the question. An example of an open-ended question would be: "Please describe what happened when you entered the building."

When the prosecutor finishes his/her direct questioning of a witness, the defense attorney then gets to question that witness. This is called cross examination, and the defense lawyer will try to ask only leading questions. These are questions that provide the detail in the question, and limit the witness to a "yes" or "no" answer. An example of a leading question would be: "So, you really didn't get a good look at the person who took your wallet, did you?"

When the prosecution finishes presenting its witnesses, the defense is not required to present any witnesses of its own. The defense may then argue that the prosecution has failed to prove each and every element of each crime charged, and ask that the case be dismissed. In the alternative,

the defense may concede that the prosecution has presented enough evidence, so that the defense must present witnesses to counter the prosecution's case. Although the person charged is never obligated to testify in his/her own defense, sometimes s/he will do so, in an effort to counter the prosecution case.

Alternatively, the defense may call other witnesses, who may provide a different, non-criminal version of the events in question. Defense witnesses may also provide an alibi defense, in which a witness will essentially testify that the person charged with the crime could not have committed it, because s/he was somewhere else at the time of its commission.

When the defense calls witnesses, the rules remain the same. The defense is then limited to asking only open-ended questions of its witnesses, and the prosecution gets to ask leading questions when cross-examining the defense witnesses.

When all of the witnesses have finished testifying, each side makes a closing argument, trying to persuade the jury of its version of the facts. Attorneys who make these arguments may be creative in doing so, but they may only argue from the testimony that was presented at the trial. They may not make reference to any other facts that were not testified to by a witness.

TRIAL CONCEPTS

OBJECTIONS

When one side in a trial is questioning one of its witnesses, the other side will listen intently to those questions, in order to be sure that they are proper. If the other side believes a question is improper, that attorney will object to the question, immediately when the question is concluded and before the witness has an opportunity to answer. The court will then rule on the objection. Sustained means that the court agrees that the objection is valid. Overruled means that the court finds no merit in the objection.

In real life, objections may be made for many, very technical reasons. For our purposes, objections may be made only for the following reasons:

- The question is leading. As previously noted, a “leading” question incorporates the desired response into the question, and calls simply for a “yes” or “no” answer. The attorney who is conducting the direct examination of a witness is prohibited from asking leading questions. They are permitted only on cross-examination of the witness. If a question is leading, any objection to it on that basis ought to be sustained by the court. When an objection is sustained, the witness is not permitted to answer the objectionable question.
- The question calls for “hearsay.” When an examiner asks a witness to testify about what someone else told him/her, such a question calls for hearsay testimony. An example of such a question would be: “Officer, what did the witness tell you s/he saw that day?” A witness may only testify to what s/he personally and directly did, or observed (but not what s/he heard another person tell him/her). A question regarding what a witness heard from someone else is improper, and a hearsay objection ought to be sustained by the court.

- The question calls for facts that are irrelevant to the case. As a general rule, in examining a witness, the attorney is limited to eliciting only facts that took place at or around the date and time of the alleged crime, and that relate directly to whether or not the crime was actually committed, and/or committed by the person charged. For example, if a robbery is charged as having occurred on March 1, 2014, a question pertaining to an alleged assault that supposedly took place on February 1, 2014 would generally be irrelevant. An objection on that basis ought to be sustained by the court.

- The witness' answer is non-responsive to the question. The rules of evidence require that a witness be limited to simply answering the question asked; to the best of the witness' ability to answer, to be sure, but only within the limits of the question. A witness may not volunteer additional information not sought by the question. For example, a question that simply asks whether a streetlight was on or off may only be answered by the witness providing that specific information; the witness may not answer by saying that "the streetlight was on and I got a good look at the face of the person who robbed me." The first part of this answer responded to the question; the second part was non-responsive, and would be, therefore, subject to a proper objection.

IMPEACHMENT OF A WITNESS

When the attorney for the opposing side questions a witness during cross-examination, s/he will try to negate, or at least limit, the impact of that witness' direct testimony. One of the ways to accomplish this is called impeaching the witness. The cross-examiner will try to make the witness "look bad," that is, as someone who should not be fully believed. This can be done in several ways. For our purposes, we will focus on three main ways, as follows:

- The most common method of impeachment is also one of the most effective. It is also simple in its concept. It merely involves confronting the witness with a prior statement that the

witness made that is inconsistent, in greater or lesser detail, with that witness' trial testimony. In order to maximize the effectiveness of this type of impeachment, a basic set-up, called a foundation, is frequently used. For purposes of this example, let's suppose the witness testified on direct examination that the person who robbed him was 6 feet tall. Assume further that the defense attorney has a copy of a police report that indicates the witness previously told the police the robber was 5 feet 9 inches tall. The cross-examiner will first lock in the witness to the detail that is to be impeached: "You testified on direct, after swearing to tell the truth, that the person who robbed you was 6 feet tall, is that correct?" "That remains your truthful testimony, does it not?" The cross-examiner will then slowly work toward the prior statement, as follows: "You spoke to a police officer shortly after being robbed, didn't you?" "And when you spoke to the police, the details of the robbery you had just experienced were very fresh in your mind, weren't they?" "And you were sure to accurately and truthfully provide the details of that robbery to the police, didn't you?" "And wouldn't it be fair to say that your recollection of the details of the robbery were clearer when you spoke to the police than they are today, some time after the robbery took place?" The set-up is now complete, and the cross-examiner goes in for the kill: "Do you recall telling the police officer that the person who robbed you was 5 feet 9 inches tall?" If the witness answers yes, the impeachment is complete. If the witness says no, or says s/he doesn't recall saying that, the attorney would then call the police officer as a witness to complete the impeachment. For our purposes, the attorney may offer the police report to the court, instead of calling the police witness.

- Another common method of impeachment is to attempt to demonstrate a particular bias on the part of the witness that might suggest the witness would be inclined to give favorable testimony to one side or the other. For example, suppose a relative of the defendant testifies for the defense and offers a different version of the events. One of the ways in which the prosecutor would attempt to impeach the relative is to question that relative concerning his/her relationship with the defendant, how much s/he cares for/loves the defendant, and how much s/he wants to help the defendant. This is usually as far as the impeachment will be developed as far as bias is concerned. It is extremely rare to get a witness to directly admit that s/he would be willing to lie to help the defendant.

- The final means of impeachment for our purposes specifically deals with alibi witnesses. This method is particularly effective when the arrest does not take place until at least several days after the day for which the alibi is being offered. The witness then has no realistic basis for remembering the details of the day in question (for example, do you recall what you had for lunch last Tuesday, or what time you ate dinner last Monday?). In this type of situation, the cross-examiner will first try to get the alibi witness to testify to as much detail surrounding the day of the alibi as possible. For example, suppose that the alibi involves the witness and the defendant going for a walk at 2:00 P.M. The line of questions might seek to elicit the following details: where they walked to; where they left from; how long it took; did they have lunch before the walk; what did they eat for lunch; what the alibi witness did that day before meeting up with the defendant; what time s/he awoke that day; what s/he had for breakfast; did s/he watch television that morning; what show did s/he watch, etc.. The examiner would then take whatever details that the witness provided for that day, and ask the same questions for different days around the alibi date, such as three days before, or four days later. The witness is now stuck. If s/he testifies in such detail to all of those days, at a certain point, the testimony becomes less and less believable. On the other hand, if s/he cannot recall the details of the other days, and has no independent reason to remember the details of the alibi day, this also tends to make the alibi testimony less believable.

INTRODUCTION OF EVIDENCE

Should any attorney wish to introduce items of evidence, such as photographs, maps, etc., the following “simplified” foundation must be laid by these questions:

“Your honor, I ask that this item be shown to the witness.”

“Do you recognize this item?”

“Please tell the court what it is.”

“Your honor, I offer this item in evidence as prosecution or defense exhibit number ____.”

PREPARATION FOR DIRECT EXAMINATION OF A WITNESS

The attorney should sit down with the witness and go over both the questions that s/he will be asking as well as the answers that the witness will be giving. Direct testimony should come out naturally. It should not sound rehearsed. And the facts are what they are. An attorney may never suggest that a witness change or add any facts so that the witness' testimony might become stronger. The purpose of any witness' testimony is to provide the truth. While preparation of that testimony in advance is both desirable and necessary, the sole purpose of the preparation is to make the truth come out in an advantageous way, given the question-and-answer format of direct examination.

For our exercise, it is extremely important that the students assigned to play the respective witnesses be thoroughly familiar with the facts that are presented in the written statements of the witness each student is portraying. This will approximate the reality that the events in those statements actually happened to the student/witness, and ensure that the testimony comes out naturally. Again, let me repeat this warning to the students assigned to conduct direct examination of a witness: prepare your witness, but do not over-prepare your witness. Testimony that appears rehearsed is not very believable.

PREPARATION FOR CROSS-EXAMINATION OF A WITNESS

The basic disadvantage facing a cross-examiner is the fact that s/he usually does not get to interview the witness beforehand. A legal rule called discovery, however, provides defense counsel with all written statements that were made by the prosecution witnesses, before the trial begins. These documents form the core of the preparation for cross-examination. They must be carefully, even painstakingly reviewed. The student assigned to be a cross-examiner should compare the prior statements to each other, noting each and every inconsistency in what the

witness related. Each inconsistency can and should be exploited during the cross-examination. This is described in the section on impeachment.

Beyond the inconsistencies, each witness' rendition of events needs to be scrutinized for its internal consistency. Is the witness' basic story logical? This is extremely important. In reviewing the statements, the cross-examiner must not suspend logic. Any part of the story that doesn't seem logical is ripe for attack on cross-examination. In dealing with an eyewitness, you may want to focus on the witness' ability to make his/her observations. Areas of possible inquiry might include: how far away the witness was from the event witnessed; what the lighting conditions were like, what the witness' angle of observation was; and whether or not there were any obstructions between the witness and the event. Just remain mindful of the following "rule" concerning cross-examination: never ask a question to which you don't know the answer, if the answer can hurt you.

A final note:

in preparing questions to possibly use in cross-examining a witness, remember to frame them as leading questions, within which you, not the witness, provide the detail and tone that you want to register with the jury.

PREPARATION FOR CLOSING ARGUMENTS

Closing arguments have a specific purpose for both sides. They must accomplish more than simply repeating the testimony that the jury has just heard. For the prosecution, this means reviewing each element of each crime charged and then pointing out the specific testimony that proved that element. For example, in a robbery case, the use of force in the taking of property is a necessary element. In summation, the prosecutor might point this out, and then ask the jury to recall the testimony of the victim, who described how s/he was thrown to the ground and

repeatedly punched while his/her briefcase was taken. The prosecutor would then urge the jury to conclude that such testimony established the element of force necessary for a robbery “beyond a reasonable doubt.”

In addition to reviewing the elements of each crime charged, the prosecutor would also remind the jury of the specific testimony establishing that the defendant was the person who committed the crimes charged. If the defense has offered an alibi defense, the prosecution must also argue how it has disproven the alibi defense, again “beyond a reasonable doubt.” The defense attorney’s argument might initially focus on the standard of proof required to convict the defendant: beyond a reasonable doubt. Defense counsel would point out that this is the highest standard known in the law, and places a great burden on the prosecution, and one it was unable to meet in this case. The defense would also stress that if a single element of a charge (e.g., the element of force in a robbery charge) is not proven, the entire charge cannot be sustained. Defense counsel would then focus his/her argument on those inconsistencies in the testimony of the prosecution witnesses that would tend to negate either the defendant’s identity as the person who committed the crimes charged, or that would tend to negate any element of the crimes charged.

The defense summation would probably conclude with a dual argument regarding the alibi defense, if one was offered. The first prong would be to emphasize that the defense need not prove the alibi; the prosecution must disprove it, and beyond a reasonable doubt, at that. The second prong would be to focus on those facts that demonstrate that the prosecution has utterly failed to do so. And such a failure requires dismissal of the case in the defendant’s favor.

COURTROOM MANNERS

The following are some simple, basic rules to follow during our trial:

- always stand when addressing the court.
- always object promptly when objecting to a question, but always wait for your adversary to finish his/her question before verbalizing the objection.
- always stop talking immediately (even in the middle of a sentence or even a word!) if the judge begins to speak.
- when making an argument to the court, always speak only to the judge; never directly argue with your adversary.

THE CASE TO BE TRIED

This is a robbery case. The complainant, Mr. I. M. Vikteem, alleges that he was approached from behind as he was walking on the public sidewalk near his house by a male teenager, who forcibly took his wallet from his back pocket. The prosecution will also offer the testimony of an alleged eyewitness, Mr. I. Sawitall, the victim's next-door neighbor, who witnessed the robbery from another neighbor's front window.

Please remember that the prosecution must not only prove the necessary elements of a robbery charge: the taking . . . of property . . . by force, it must also establish that the person charged is indeed the person who committed the robbery, beyond a reasonable doubt. In conducting the questioning, both the prosecution and the defense will necessarily focus a great deal of attention to the opportunity that the victim (really not much of one) and the eyewitness (a bit greater) had to actually see and focus on the face of the perpetrator. The prosecution will “slow down the action”, frame-by-frame, in questioning the eyewitness, in an effort to demonstrate that the eyewitness had a sufficient chance (being close enough (less than 30 feet away)) to look directly at the face of the perpetrator (while it was illuminated by Dr. Juhel's spotlights) and focused on it sufficiently to remember it, even though the incident happened rather quickly (10 to 20 seconds, perhaps). The defense, on the other hand, will speed things up, cross-examining the eyewitness about how quickly it all happened (perhaps less than 4-5 seconds); how the witness looked at the perpetrator's clothing for much of that time (after all, he was able to provide a somewhat detailed description); how the witness looked at his friend (and not really at the perpetrator) while it was happening (wouldn't that be natural and logical?); how the spotlights didn't project light all the way to the other side of the street; how the perpetrator ran out of the shadows, did his deed and was quickly back in the shadows; how the perpetrator was wearing a baseball cap, throwing an extra shadow across his face; how the witness was too far away (as much as 50 feet?) to see clearly; and how, whatever fleeting look the witness had, it was only from the side of the perpetrator's face in any event.

The defense will also offer an alibi defense. The defendant, Mr. I. Rob Manny, claims he could not have committed the robbery, because he was playing video games at his cousin's house during the time that the robbery was committed. His cousin, Ms. Noway Hedidit, will testify as to his presence at her house that evening, what time he arrived, what they did and when he left. Although the defendant does not have to offer any defense, and is never under any obligation to testify, for purposes of this trial, both the alibi witness and the defendant, himself, will testify.

ASSIGNMENTS

Mr. Hall will assign roles as follows:

4 students will be assigned to play the role of each of the 4 witnesses.

4-6 other students (depending on class size) will be assigned as prosecutors. They will conduct direct examinations of the complaining witness and the eyewitness, and be ready to make appropriate objections during cross-examination. They will also be ready to make appropriate objections during the direct examination of the defendant's alibi witness and of the defendant, and conduct the cross-examination of those witnesses. One will make the prosecution's closing argument.

4-6 other students (again, depending on class size) will be assigned as defense attorneys. As set forth above, they will be ready to make appropriate objections during the complainant's and the eyewitness' testimony, and to cross-examine those witnesses. They will also conduct direct examination of the alibi witness and of the defendant, and will be ready to make appropriate objections during cross-examination. One will make the defense's closing argument.

THE NECESSARY FACTS:

PLEASE NOTE THE FOLLOWING:

1. For our trial, the direct examination of I. M. Vikteem and I. Sawitall during the trial must be based upon each witness' statement to the District Attorney, and NOT upon each witness' statement to the Police Officer.
2. Similarly, the direct examination of Noway Hedidit during the trial must be based upon the witness' statement to the Defense Attorney, and NOT upon that witness' statement to the Police Officer.

WRITTEN STATEMENT of I. M. VIKTEEM to POLICE OFFICER GOTTEM

I reside at 22 I. U. Willets Road in Roslyn, New York. On January 8, 2018, at just after 5:00 P.M., I left my home to take a walk, in the direction of Shelter Rock Road. As I was passing my neighbor's house at 18 I.U. Willets Road, someone ran up behind me, bumped into me, took my wallet out of my back pocket, and ran down I. U. Willets Road in the same direction that I had been walking. I did not get a good look at this person, but he appeared to be a male teenager, approximately 15 to 19 years of age, with dark hair, wearing a baseball hat, dark jacket, dark pants and white sneakers. He was about my height (I am 5' 8" tall) and skinny. I tried to chase him, but he ran very fast and turned left (north) onto Shelter Rock Road. By the time I reached that corner, he was nowhere in sight. I was carrying my wallet in my left rear pants pocket, as I always do, and was wearing a short leather jacket. My wallet contained my credit cards and \$75.00 in U. S. currency.

WRITTEN STATEMENT of I. M. VIKTEEM to DISTRICT ATTORNEY

I reside at 22 I. U. Willets Road in Roslyn, New York. On January 8, 2018, at about 4:45 P.M., I left my home to go for a walk, in the direction of Shelter Rock Road. When I had just walked passed my neighbor's house, an individual came up behind me from the left, pushed me 2 or 3 times, spinning me around and knocking me off balance, and ripped my wallet from my left rear pants pocket. After pausing briefly to look inside the wallet, this person ran down I. U. Willets Road toward Shelter Rock Road. While I did not get a very good look at this individual, he was a male teenager either 15 or 16 years of age, about 5' 6" tall and 150 lbs. His hair was dark, and he was wearing a Yankees baseball cap, dark jacket, blue jeans and light sneakers. I chased after him, but when he got to Shelter Rock Road, he turned left (north) and disappeared from view. My wallet was in my left rear pants pocket, as it habitually was, and I was wearing a short leather jacket. My wallet contained my credit cards and \$300.00 in U.S. currency. Two weeks later, Officer Gottem called me and told me they had caught the person who had robbed me. Unfortunately, he also told me that none of my property was recovered. Officer Gottem also told me that the robber was a local teenager who has had two previous arrests for robbery.

WRITTEN STATEMENT of I. SAWITALL to POLICE OFFICER GOTTEM

I reside at 24 I. U. Willets Road in Roslyn, N.Y. I have been the next-door neighbor of I. M. Vikteem for the past 18 years. We are good friends. Earlier this evening, January 8, 2018, at about 5:15 P.M., I was visiting another neighbor, Dr. Jean-Marc Juhel, who lives at 18 I.U. Willets Road. I was looking out of Dr. Juhel's living room window, which faces I. U. Willets Road. I saw Mr. Vikteem walking in front of the house, going toward Shelter Rock Road. I also saw a male teenager run up to Mr. Vikteem from behind, push him twice, and grab something from his pocket. The teenager then ran down I. U. Willets Road toward Shelter Rock Road. The teenager looked to be about 16 to 18 years of age, tall and thin. He was wearing a dark jacket and dark pants. I had never seen him before, but think I would recognize this individual if I saw him again.

WRITTEN STATEMENT of I. SAWITALL to DISTRICT ATTORNEY

I have resided at 24 I. U. Willets Road, next door to my good friend and neighbor, I. M. Vikteem, for the past 18 years. On the evening of January 8, 2018, just past 5:00 P.M., I was visiting another neighbor, Dr. Jean-Marc Juhel, who resides at 18 I.U. Willets Road. Dr. Juhel's home is situated on a quarter-acre of land, and is recessed approximately 30 feet off I.U. Willets Road. I happened to be looking out of his living room window, which faces onto I. U. Willets Road. Dr. Juhel's house has dual outdoor floodlights on each corner, and they illuminate most of the street beyond his property. I noticed Mr. Vikteem walking briskly in front of his house, toward Shelter Rock Road. As he continued on his way, out of the shadows from behind him, I saw a male teenager run up behind him, bump into him with his shoulder, and reach into his clothing from behind. The teenager then kept running in the same direction toward Shelter Rock Road. Mr. Vikteem ran after him and I quickly lost sight of both of them. The teenager was tall and thin and appeared to be 15 to 16 years of age. He was wearing a black jacket and blue jeans. I next saw him about two weeks later when Police Officer Gottem telephoned and told me they had caught the person they believed had robbed Mr. Vikteem. Officer Gottem asked me to come down to the precinct to see this individual and positively identify him. When I arrived at the precinct, I saw a male teenager, wearing a black jacket and blue jeans, sitting at a desk with Officer Gottem, and I told Officer Gottem that this was the same person I had seen run into Mr. Vikteem on January 8.

**WRITTEN STATEMENT of I. ROB MANNY to POLICE OFFICER
GOTTEM**

I am 14 years old. I am 5' 6" tall and weight about 125 pounds. There's no way I could have robbed that person. On that evening I was at my cousin's house on Shelter Rock Road. We played video games and ate dinner. Then I went home.

WRITTEN STATEMENT of NOWAY HEDIDIT to POLICE OFFICER GOTTEM

I am I. Rob Manny's first cousin. I live at 131 Shelter Rock Road in North Hills, Roslyn, NY. My house is southeast of I.U. Willets Road. On January 8, 2018, my cousin came to visit me at my house. He arrived at about 3:30 P.M. and stayed until 6:30 P.M., when he left to go home. When he arrived, we did some homework together and then played video games in the basement, until I went upstairs to help my mother make an early dinner. While I was doing that, Rob stayed in the basement watching television. After eating dinner, we played more video games until he left.

WRITTEN STATEMENT of NOWAY HEDIDIT to DEFENSE ATTORNEY IKAN GEDIMOV

I. Rob Manny is my first cousin. I am 3 years older than Rob, and he has been my “little brother” for as long as I can remember. I live at 131 Shelter Rock Road in North Hills, Roslyn, New York, which is one block west of Herricks Road and about four blocks southeast of I.U. Willets Road. On January 8, 2018, Rob came to my house to visit me, as he does at least twice a week. He arrived after school, around 3:45 P.M. and stayed until after dinner, around 7:00 P.M. When he first arrived at my house, we spent a little time doing our homework together, and then we played a video game in my basement “family room.” At about 4:30 P.M., I went upstairs to help my mother prepare our early dinner. Rob stayed in the basement to watch television. When dinner was ready, between 5:45 and 6:00 P.M., I went downstairs to get Rob and bring him up. After dinner, at about 7:00 P.M., Rob went straight home, since he had an early exam the next morning. Near the ceiling of our basement are 3 casement windows that are usually kept locked from the inside (and open from the inside). The staircase coming up from the basement exits just to the right of our kitchen, @ 6 feet into the hallway that connects the kitchen to the front foyer. Our house, including the basement, is alarmed but we usually disarm it when present at home.